

6 February 2012



The Hon David Clarke
The Chairperson
Legislative Council Standing Committee on Law and Justice
Parliament House
Macquarie Street SYDNEY 2000

Dear Mr Clarke

Opportunities to consolidate tribunals in NSW – question on notice

The Committee asked PIAC whether there should be 'a central appeal point that was cheap, accessible and easy that might be one way of getting consistency'. In response to this question, we make the following points.

If the Committee intends to recommend a general consolidation of NSW Tribunals, then PIAC sees merit in the establishment of an internal appeals panel.

Having said this, PIAC maintains its strongly held view that the existing expertise of tribunals such as the Mental Health Review Tribunal (MHRT), the Guardianship Tribunal and the Consumer, Trader and Tenancy Tribunal (CTTT) should be maintained.

This means not only the expertise of tribunal members, but also the expertise of the staff of the registries and other sources of administrative support available to the tribunals. They are the first point of contact for members of the public, potential applicants, victims and potential witnesses and their communication with the public must always be useful and well informed. Registries should always be easily accessible to members of the public. PIAC believes the specialised expertise referred to above could be maintained and nurtured within a more centralised, combined tribunal registry, while still achieving economies of scale and increased efficiencies.

The existence of a well-qualified and experienced appeals panel would certainly assist in maintaining consistency in decision making. However, it would not negate the necessity for maintaining a high level of expertise and competence across the separate constituent tribunals (or panels of a consolidated tribunal). It is neither efficient nor equitable to have a system where applicants have to routinely appeal to obtain a fair or lawful outcome.

PIAC would advocate for an appeals panel that in general only deals with questions of law, rather than merits/all grounds appeals, with the following caveats:

- There should be a provision allowing a person to seek leave to obtain merits review of the initial tribunal decision in the appeals panel, with the provision based on s 113(2)(b) of the *Administrative Decisions Tribunal Act 1997* (NSW).

Level 9, 299 Elizabeth St
Sydney NSW 2000
DX 643 Sydney
Phone: 61 2 8898 6500
Fax: 61 2 8898 6555
www.piac.asn.au
ABN: 77 002 773 524

- Where there is an existing statutory right of appeal to the Supreme Court (for example under s 67 of the *Guardianship Act 1987* (NSW) or under s 163 of the *Mental Health Act 2007* (NSW)), that right should be retained, with an option to elect to appeal to the internal appeals panel as an alternative.
- The appeals jurisdiction should be 'costs free' or it should have a provision where costs can only be awarded in 'special circumstances'.

Any reform should also ensure that every tribunal should provide written reasons for its decisions and there should be a recording or transcription of the proceedings of the tribunal. (PIAC notes that the MHRT currently does not routinely provide written reasons for most its decisions.) Otherwise, the appeals process can be neither effective nor fair. To prevent unnecessary delays, there should be time limits on the provision of written reasons and the provision of a transcript, after an appeal is lodged.

Finally, PIAC submits that an appeal system cannot be equitable or efficient unless there is Legal Aid funding of appellants who do not have the financial resources to fund their own legal representation. PIAC has no objection to Legal Aid applying a merit tests to the granting of legal aid in these circumstances.

Yours sincerely



Peter Dodd
Solicitor, Health Policy and Advocacy
Public Interest Advocacy Centre

Direct phone:
E-mail: